

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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SALVADOR M. MENDEZ, JR.,

Plaintiff-Appellee,

v

DAVID M. MENDEZ and SYLVIA MENDEZ,

Defendants-Appellants.

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UNPUBLISHED

June 21, 2007

No. 268610

Wayne Circuit Court

LC No. 04-402934-CH

Before: Whitbeck, C.J., and Wilder and Borrello, JJ.

PER CURIAM.

Defendants David and Sylvia Mendez appeal as of right from the trial court's order, following a bench trial, quieting title to disputed property in favor of plaintiff Salvador Mendez. We affirm.

**I. Basic Facts And Procedural History**

Defendants are a married couple, and Salvador Mendez is the father of defendant David Mendez. In early February 2004, Salvador Mendez filed this action alleging that in 1983 defendants agreed to sell 1508 Applewood, Lincoln Park, Michigan to him and his wife Beatrice Mendez. Salvador and Beatrice Mendez were to pay defendants \$8,000, assume defendants' mortgage on the house, and pay the property taxes. Salvador Mendez alleged that he and Beatrice Mendez fulfilled these requirements, but defendants were now claiming that he was merely a tenant and refused to deliver a deed. The transaction was evidenced by a handwritten document, purportedly prepared and signed by defendants, which referenced the receipt of the \$8,000 down payment. Salvador Mendez sought a judgment giving him title to the home and ordering defendants to execute a quitclaim deed to effectuate the same.

Defendants filed their answer denying that they agreed to sell the home to Salvador Mendez. Defendants asserted that the parties merely agreed that Salvador and Beatrice Mendez would help pay off the mortgage and be allowed to live in the home rent-free as long as they paid the property taxes and maintained the property.

Defendants moved for summary disposition pursuant to MCR 2.116(C)(7), alleging that Salvador Mendez's action was barred because (1) the 15-year limitations period applicable to suits involving contracts for the sale of land had expired, and (2) the document on which Salvador Mendez relied failed to comply with the statute of frauds. Defendants also sought

dismissal under MCR 2.116(C)(10), arguing that there was no issue of material fact that they still owned the home. Defendants also sought dismissal under MCR 2.116(C)(8), arguing that Salvador Mendez failed to allege the existence of a written contract or a conveyance and therefore failed to state a claim on which relief could be granted.

Salvador Mendez responded, arguing that the limitations period did not begin to accrue until defendants repudiated the agreement at some point in or after 2002, and that the 1983 agreement was sufficient to satisfy the statute of frauds. Therefore, he argued that summary disposition was not warranted under MCR 2.116(C)(7). Salvador Mendez additionally maintained that he sufficiently alleged an agreement and therefore summary disposition was not proper under MCR 2.116(C)(8).

The trial court considered and denied defendants' motion, concluding that Salvador Mendez complied with the statute of limitations and that the 1983 documentation was sufficient to establish a contract. The matter proceeded to trial. After Salvador Mendez rested his case, defendants moved for a directed verdict on the grounds of violation of the statute of limitations and the statute of frauds, which the trial court denied. At the conclusion of the trial, the trial court issued its decision on the record, finding in favor of Salvador Mendez. In early February 2006, the trial court entered a final order granting Salvador Mendez's request to quiet title and ordered defendants to execute a deed conveying title to him. The trial court later denied defendants' motion for a stay pending appeal ruling:

No, I'm not going to stay it. This is one of the worst cases of fabricated testimony I ever heard. And it's a continuing miscarriage of justice to withhold this man's property from him any longer.

## II. Summary Disposition

### A. Standard Of Review

Defendants argue that the trial court erred in denying their motions for summary disposition under MCR 2.116(C)(7), (8), and (10). We review a trial court's decision to grant or deny summary disposition de novo.<sup>1</sup> In reviewing a motion for summary disposition under MCR 2.116(C)(7), we consider all the documentary evidence submitted by the parties and accept as true the plaintiff's well-pleaded allegations, unless contradicted by documentary evidence.<sup>2</sup>

### B. Legal Standards

"A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone."<sup>3</sup> "All factual allegations supporting the claim, and any

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<sup>1</sup> *Mouradian v Goldberg*, 256 Mich App 566, 570-571; 664 NW2d 805 (2003).

<sup>2</sup> *Id.* at 571.

<sup>3</sup> *Smith v Stolberg*, 231 Mich App 256, 258; 586 NW2d 103 (1998).

reasonable inference or conclusions that can be drawn from the facts, are accepted as true.”<sup>4</sup> “Summary disposition is appropriate only if the plaintiff’s claim is so clearly unenforceable as a matter of law that no factual development could establish the claim and justify recovery.”<sup>5</sup>

A motion under MCR 2.116(C)(10) tests the factual support for a claim.<sup>6</sup> This Court “must consider the available pleadings, affidavits, depositions, and other documentary evidence in a light most favorable to the nonmoving party and determine whether the moving party was entitled to judgment as a matter of law.”<sup>7</sup>

### C. Limitations Period

Defendants argue that they were entitled to summary disposition under MCR 2.116(C)(7) because Salvador Mendez’s claim was barred by the 15-year period of limitations applicable to actions for the recovery of land.<sup>8</sup>

A claim for the recovery of land does not accrue until there has been a disseisin or a repudiation of the plaintiff’s legal rights.<sup>9</sup> Salvador Mendez presented evidence that defendants agreed to sell the residential property to him and his late wife Beatrice Mendez in 1983, in consideration for a down payment of \$8,000, his assumption of the existing mortgage on the property, and his payment of the property taxes. Salvador Mendez also presented evidence that he paid the \$8,000 down payment, as well as the mortgage and property taxes, and was continuously recognized by defendants as the owner of the property until shortly before he filed suit in 2004, at which time defendants took the position that there was never a sale and that he was only a tenant who could be evicted. Viewed in a light most favorable to Salvador Mendez, the evidence raised a question of fact whether disseisin did not occur until shortly before he filed suit. Therefore, we conclude that the trial court did not err in denying defendants’ motion for summary disposition on this ground.

### D. Statute Of Frauds

Defendants alternatively argue that summary disposition was warranted under MCR 2.116(C)(7) because the alleged 1983 agreement was barred by the statute of frauds and, therefore, was unenforceable.

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Lewis v LeGrow*, 258 Mich App 175, 192; 670 NW2d 675 (2003).

<sup>7</sup> *Unisys Corp v Comm’r of Ins*, 236 Mich App 686, 689; 601 NW2d 155 (1999).

<sup>8</sup> MCL 600.5801(4).

<sup>9</sup> *Wengel v Wengel*, 270 Mich App 86, 100; 714 NW2d 371 (2006); *Steward v Panek*, 251 Mich App 546, 552; 652 NW2d 232 (2002).

This Court reviews de novo the question whether the statute of frauds bars enforcement of a purported contract.<sup>10</sup> To survive a challenge under the statute of frauds, a contract for the sale of land must (1) be in writing, and (2) be signed by the seller.<sup>11</sup> However, the statute does not require the entire contract to be in writing; a note or memorandum having sufficient probative value in establishing the contract will suffice.<sup>12</sup> Extrinsic evidence may then be used to supplement, but not contradict, the terms of the written agreement.<sup>13</sup>

Here, Salvador Mendez presented a written document that was signed by both defendants. The document identifies the parties to the transaction, sets forth the property address of the property in question, and expresses the consideration for the sale. We agree with the trial court that the document has substantial probative value in establishing a contract. Additional details of the parties' contract were permitted to be shown by extrinsic evidence. Accordingly, we conclude the trial court did not err in denying defendants' motion for summary disposition based on the statute of frauds.

#### E. Other Grounds For Summary Disposition

We also find no merit to defendants' arguments that they were entitled to summary disposition under either MCR 2.116(C)(8) or C(10).

Salvador Mendez's complaint alleged, in pertinent part:

25. . . . The Defendants agreed to transfer their entire interest in 1508 Applewood to Plaintiff and his late wife on the following terms:

- a. tendering of a "total down payment" of \$8000.00
- b. The Plaintiff and his late wife Assuming the existing mortgage on the property.

26. These terms were clearly set forth in a handwritten document prepared by and signed by the Defendants. . . . (Document attached hereto as Exhibit 5.)

27. Plaintiff also agreed to assume payment of all taxes on the property, which he in fact did, from the date in 1983, until the present date.

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<sup>10</sup> *Zander v Ogihara Corp*, 213 Mich App 438, 441; 540 NW2d 702 (1995).

<sup>11</sup> MCL 566.108; *Zurcher v Herveat*, 238 Mich App 267, 277; 605 NW2d 329 (1999).

<sup>12</sup> *Opdyke Investment Co v Norris Grain Co*, 413 Mich 354, 367; 320 NW2d 836 (1982); *Kelly-Stehney & Assoc, Inc v MacDonald's Industrial Products, Inc (On Remand)*, 265 Mich App 105, 113 n 1; 693 NW2d 394 (2005).

<sup>13</sup> *Opdyke, supra* at 367.

35. The Defendants have now communicated to Plaintiff that they are denying the 1983 agreement . . . and that they consider Plaintiff a mere “tenant”.

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38. Plaintiff carried out all of his obligations under that Agreement, in that he paid Defendants the down payment of \$8000.00, began paying all taxes on the property and has for 21 years, paid off the mortgage in full in 1986, collected rent from tenants from 1983 until 1990 and in all other respects fulfilled his obligations as purchaser and owner of the home.

Accepting these allegations as true, we conclude that the complaint sufficiently alleged a claim of superior title to the disputed property based on a 1983 agreement with defendants. Salvador Mendez’s claim was not so clearly unenforceable as a matter of law that no factual development could establish the claim and justify recovery. Accordingly, we conclude that the trial court properly denied defendants’ motion under MCR 2.116(C)(8).

Similarly, in response to defendants’ motion for summary disposition, Salvador Mendez presented evidence factually supporting his allegations of the 1983 agreement and his compliance with the terms of that agreement. He also presented evidence that defendants for many years recognized him as the owner of the property consistent with the 1983 agreement. Therefore, we conclude that the trial court properly denied defendants’ motion for summary disposition under MCR 2.116(C)(10).

### III. Directed Verdict

#### A. Standard Of Review

Defendants also contend that the trial court erred in denying their motion for a directed verdict at trial. We review de novo a trial court’s decision on a motion for a directed verdict.<sup>14</sup> “In determining whether a question of fact existed that would preclude a directed verdict, we draw every reasonable inference in favor of the nonmoving party, while recognizing the trial court’s superior opportunity to observe witnesses.”<sup>15</sup>

#### B. Grounds For Directed Verdict

Defendants moved for a directed verdict based on the statute of limitations and the statute of frauds. Viewed in a light most favorable to Salvador Mendez, the evidence at trial supported a finding that disseisin or repudiation did not occur until shortly before Salvador Mendez filed this lawsuit in 2004, when defendants refused to recognize him as the owner of the property and denied the existence of the 1983 agreement. Accordingly, the evidence supported a finding that Salvador Mendez’s action was not barred by the 15-year limitations period.<sup>16</sup> Further, as

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<sup>14</sup> *Coble v Green*, 271 Mich App 382, 385; 722 NW2d 898 (2006).

<sup>15</sup> *Id.* at 386 (internal citations omitted).

<sup>16</sup> *Wengel, supra* at 100; *Steward, supra* at 552.

previously discussed, Salvador Mendez presented sufficient evidence of a writing signed by defendants to avoid application of the statute of frauds.

#### IV. Finding Of Fact

##### A. Standard Of Review

Defendants challenge the trial court's findings of fact. Actions to quiet title are equitable and are reviewed de novo on appeal, but the trial court's findings of fact supporting its decision are reviewed for clear error.<sup>17</sup>

##### B. Credibility

To a large extent, this case hinged on credibility. Defendants denied the existence of the 1983 agreement and claimed that the signatures on the 1983 writing either were not their signatures, or that their signatures were obtained on a blank document and that the material terms were filled in afterward, without their knowledge. The trial court resolved these issues against defendants, in favor of Salvador Mendez. Deferring to the trial court's superior opportunity to observe the credibility of the witnesses,<sup>18</sup> we conclude that defendants have not shown that the trial court's factual findings were clearly erroneous.

Affirmed.

/s/ William C. Whitbeck

/s/ Kurtis T. Wilder

/s/ Stephen L. Borrello

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<sup>17</sup> *AFSCME v Bank One, NA*, 267 Mich App 281, 293; 705 NW2d 355 (2005); *Gorte v Dep't of Transportation*, 202 Mich App 161, 165; 507 NW2d 797 (1993).

<sup>18</sup> *Coble*, *supra* at 386.